



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Workforce Housing Program	<b>Number</b> 18-06
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

Department of Housing and Community Affairs

Montgomery County Regulation on:

REQUIREMENTS AND PROCEDURES FOR THE

WORKFORCE HOUSING PROGRAM

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued by: County Executive

Regulation No. 18-06

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Supersedes: New Regulation

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Effective Date: To Be Determined

Sunset Date: December 1, 2014

## SUMMARY:

This Executive Regulation establishes the policies and procedures for the Administration of the Workforce Housing Program.

## ADDRESSES:

Information and copies of this regulation are available from the Department of Housing and Community Affairs, (DHCA), Division of Housing and Code Enforcement, 100 Maryland



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Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850

## STAFF CONTACT:

Manager, Single Family Housing Programs, Telephone Number 240-777-3600

## BACKGROUND INFORMATION:

Chapter 25B of the Montgomery County Code, 2004, as amended, established the provisions of the Workforce Housing Law. This regulation establishes the policies and procedures for the administration of the Workforce Housing Law. The regulation is applicable to subdivisions having a Workforce Housing requirement, to Workforce Housing Units (WFH Units) which are sold, resold, or rented through the program, and to persons or households applying for eligibility to purchase or rent a WFH Unit.

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## **Section 1 Definitions**

1.1 "Alternative Compliance Measure" means a method of providing WFH Units other than under the standard requirement by building the WFH Units at an alternative location within the same planning policy area, building or converting the required number of units from non-residential uses, or buying WFH Units for which the rental or for sale control period have expired.



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1.2 "Alternative Review Committee" means a committee composed of the Director, the Executive Director of the Commission, and the Director of Park and Planning, or their designees.

1.3 "Capital Improvement" means permanently affixed improvements, excluding luxury and cosmetic items such as painting, interior decorating, temporary improvements, and non-fixed improvements.

1.4 "Certificate of Eligibility" means a non-transferable certificate which is effective for a specified period of time, which is issued by the Department to persons meeting the Program's minimum eligibility criteria.

1.5 "Certified Household" means a household that has a Certificate of Eligibility to purchase or rent a WFH Unit.

1.6 "Change in Type of Building Construction" means a change in the type, method and materials of construction from a Garden Style building to a High Rise building:

a) "Garden Style Building" means a multi-family dwelling unit structure that is four (4) stories or fewer in height, and is constructed primarily of wood and/or metal frame materials and associated methods.

b) "High Rise Building" means any multifamily residential or mixed use (residential and commercial) building that is higher than four (4) stories, and is constructed primarily of steel reinforced concrete materials and associated methods.

1.7 "Commission" refers to the Montgomery County Housing Opportunities Commission, or its successor agency.

1.8 "Consumer Price Index" means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor, or any similar index designated by regulation.

1.9 "Control period" means the time a WFH Unit is subject to either resale price controls and owner occupancy requirements or maximum rental limits as provided herein. For a WFH Unit originally offered for sale or rent after December 1, 2006, the control period for sale WFH Units is 20 years from the Date of Original Sale; for rental WFH Units the control period is 99 years from the Date of Original Rental. For sale WFH Units, such control period is re-initiated upon each sale that occurs within the initial or subsequent control periods.

1.10 "Date of Original Rental" means the date that the first lease of a workforce housing unit takes effect.

1.11 "Date of Original Sale" means the date of settlement for purchase of workforce housing unit.

1.12 "Department" means the Department of Housing and Community Affairs.

1.13 "Developer" means a person or other legal entity that seeks to develop a housing project.



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1.14 “Development Application” means submitting an original application for a development approval to the Planning Board (including, but not limited to, a preliminary plan of subdivision, site plan, development plan, or project plan), or applying to DPS for a building permit when there is no site plan, whichever is applicable.

1.15 “Director” means the Director of the Department or the Director’s designee.

1.16 “Disabled Individual” means an individual who has a physical or mental impairment that substantially limits one or more of the individual’s major life activities.

1.17 “Eligibility List” means a list of Interested Households maintained by the Department.

1.18 “Fair Market Value of Capital Improvements” is defined as the actual and reasonable costs of materials, professional fees, contractor’s costs, and permit fees associated with furnishing and installing Capital Improvements.

1.19 “Housing Initiative Fund” means the fund established under Section 25B-9.

1.20 “Interested Households” means households who have completed and submitted an application, including a self-certification form, to the Department, in order to be placed on the Eligibility List to purchase a WFH Unit.

1.21 “Moderately Priced Dwelling Unit,” or “MPDU,” means a dwelling unit produced in accordance with Chapter 25A of the Montgomery County Code, 2004, as amended.

1.22 “Median Income” means the area-wide median income for the Washington, DC Primary Metropolitan Statistical Area (PMSA) as published annually by the U.S. Department of Housing and Urban Development (HUD).

1.23 “Offering Agreement” means a written agreement prepared by the Developer and submitted to the Department, and which is subject to the review and approval of the Department at the Director’s discretion, in which the Developer makes WFH Units available to Certified Households.

1.24 “Planning Board” refers “to the Montgomery County Planning Board, or its successor agency.

1.25 “Planning Policy Area” means a geographic area defined in the County’s Annual Growth Policy.

1.26 “Primary Residence” means the place where a person spends 51% or more of their time and, at a minimum, the address at which a person is registered to vote, and the address indicated on their drivers license and vehicle registration.

1.27 “Priority Marketing Period” means a period of no more than 90 days during which time the WFH Unit must be available exclusively for sale or rent to Certified Households.

1.28 “Program” means the Workforce Housing Program.



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1.29 “Purchaser’s or Renter’s Agreement” means a form issued by the Department and signed by the purchaser and/or renter of a WFH Unit in which the purchaser and/or renter agrees that they must occupy the unit as their primary residence and otherwise comply with the provisions of Chapter 25B.

1.30 “Title 11” means Title 11, Maryland Condominium Act, Real Property Article, Annotated Code of Maryland.

1.31 “Workforce Housing Law” means Chapter 25B of the Montgomery County Code, 2004, as amended.

1.32 “Workforce Housing Unit (WFH Unit)” means a dwelling unit in a workforce housing project that is subject to rent limits or sales controls under Chapter 25B of the Montgomery County Code, 2004, as amended.

## **Section 2 Eligibility for Purchasing or Renting WFH Units and Occupancy Requirements**

### **2.1 Rental Certification.**

(a) To be certified to rent a WFH Unit, a household must apply to the Department and be determined by the Department to be eligible for participation in the program. To determine whether an individual or household meets the eligibility requirements, the following information and documentation for every wage earner in the household must be provided to the Department:

- (1) An original signed application,
- (2) Copies of the two most recent previously filed federal income tax returns,
- (3) The applicant’s two most recent W-2 forms,
- (4) Copies of divorce or separation agreements (if applicable),
- (5) Copies of the two most recent employment pay check stubs from each current employer.
- (6) The Department reserves the right to require certified copies of a household’s federal tax forms and other documentation it deems necessary.

(b) Persons who do not have the required federal tax information because they did not live in the United States at any time during the previous one or two tax years must supply a copy of their passport and the passports of each adult family member indicating their dates of entry into the United States. In addition, these persons must supply





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evidence from the United States Internal Revenue Service verifying that they have not filed federal income taxes in the previous one or two years, whichever is applicable.

(c) A household which includes a person who is self-employed must demonstrate that they are within the Program's income guidelines by providing evidence and documentation in a form acceptable to the Department.

(d) To be eligible to rent a WFH Unit an applicant must be a County resident and employed at an establishment located in the County, or have a written job offer to work at an establishment in the County. The Department may require additional documentation to verify eligibility if the foregoing documentation is not sufficient.

(e) A household determined to be eligible to rent a WFH Unit will be issued a Certificate of Eligibility which contains an expiration date. The expiration date of rental Certificates of Eligibility generally will be twenty-four months from the date of issuance.

(f) In the case of issuing Certificates of Eligibility for WFH Unit rental units, the Department may assign its responsibility for accepting applications and certifying an individual's or household's eligibility under the Program to individual apartment complexes containing WFH Units. In such cases, the Department must annually notify the apartment complexes of the applicable income limits and other eligibility criteria. In addition, the complexes must submit their application, lease, and leasing procedures to the Department for review and approval.

## 2.2 Purchaser Certification.

(a) A Certificate of Eligibility to purchase a for sale WFH Unit will only be issued to persons selected in the lottery (described in Section 6.2 of this regulation) and who, after further verification, are found to be eligible by the Department.

(1) **Eligibility List of Interested Households.** The first step in being certified to purchase a WFH Unit, is for a household to apply to be placed on an Eligibility List (thereby becoming an "Interested Household"). To apply to become an Interested Household, households are required to provide self-certification of income, assets, residence, employment, proof of attendance at a County approved home buyer seminar, and other information as required by the Department in a form acceptable to the Department. A household which cannot self-certify their eligibility for the program may not become an Interested Household.

## (2) Becoming a Certified Household.

(A) Interested Households selected by lottery must provide in a timely manner as determined by the Department all the documentation required of renters in Section 2.1(a) above, and also supply a pre-qualification letter from a mortgage lender in a form acceptable to the Department that includes the maximum loan amount for which the Interested Household would qualify, as well as verification of assets, and other information as required by the Department.



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(B) Interested Households, selected through the lottery and found eligible by the Department will receive a Certificate of Eligibility to purchase a WFH Unit from the Department, thereby becoming a Certified Household. A Certificate of Eligibility will be applicable only to the project for which the lottery was held, with the following exception: a Certified Household who is selected in a subsequent lottery that is held within six months of the date of becoming a Certified Household will not need to be re-certified by the Department unless a change in household size, income, or some other factor affecting a household's eligibility for the Program necessitates a re-certification. The Certified Household must notify the Department whenever such a change occurs; failure to do so may result in that household's disqualification from the Program.

(b) When the Department determines that an Interested Household has knowingly supplied false information to qualify for purchase or rental of a WFH Unit, that Interested Household will be barred from the Program.

(c) The Department may set defined time periods during which applications to the Eligibility List will be accepted, and the Department may determine if and when the Eligibility List may be temporarily closed.

(d) Homebuyer Seminar. Before a household may apply to become an Interested Household, a household must submit a certificate of completion of a Department approved home buyer seminar.

2.3 Requirements for Eligibility – Income. To determine a household's eligibility for the Program, except in circumstances described in subsection (f) below, the Department must determine that the household's total income is at least equal to the approved minimum and does not exceed the approved maximum income limits for sale or rental housing in effect at that time. The Department may adopt uniform policies for determining how household annual gross income must be calculated.

(a) Minimum Income – The minimum income for the Program will be the maximum income for the MPDU Program currently in effect (currently 70 percent of area median, but as may be changed through Executive Regulation).

(b) Maximum Income. By June 15th of each year, the Director must set the maximum incomes allowed under the rental and sales programs according to the following procedures. The maximum income allowed in order to be eligible for a WFH Unit is set at one hundred and twenty (120%) of the median income for a household size of four (4). These income figures for a household of four are then multiplied by the following adjustment factors to determine the maximum income allowed for various household sizes. The resulting figure is rounded to the nearest \$500.

Household Size	1	2	3	4	5
Adjustment Factor	.70	.80	.90	1.00	1.08

(c) If the change in median income from the preceding year is negative, the Director may adjust the maximum income by the percentage change in the consumer price index for the preceding 12 month period.

(d) In the Department's annual report to the Council regarding the Program, the Director will report on the





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income limits in effect for the year and the methodology used to arrive at the figures.

(e) Income is defined as the gross income received annually from all sources by all wage earners in a household. Sources of income include, but are not limited to, the following:

- (1) Wages, salary, and tip income;
- (2) Child support;
- (3) Alimony;
- (4) Interest from savings and checking accounts;
- (5) Dividends from stocks and bonds, and interest from certificates of deposit;
- (6) Social Security benefits;
- (7) Veterans Administration benefits;
- (8) Overtime pay;
- (9) Unemployment insurance benefits;
- (10) Bonus payments;
- (11) Pension and retirement payments;
- (12) Long-term Disability benefits; and
- (13) Any other annuities or stipends received.

(f) A Developer may fulfill the Workforce Housing Program requirement for a particular development through the construction of housing under other federal, state, or specific local programs to assist low and moderate income families. In such a case, the income limits and other requirements of that particular housing program must apply rather than the requirements set forth herein.

2.4 Special Income Exception for Conversion of Rental WFH Units to Condominiums. A household that rents a WFH Unit and lawfully occupies the unit at the time it is offered for sale must be offered the right-of-first refusal to purchase the WFH Unit under Title 11 as long as the household qualifies for the financing necessary to purchase the unit, and so long as the household met all eligibility standards at the date of original rental. This right-of-first refusal is



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governed by Title 11. If the tenant does not sign a contract and secure financing during that time, the unit must be offered to Certified Households through a method to be determined by the Department. A tenant eligible to exercise an extended tenancy right as provided in Title 11 may continue to occupy the WFH Unit through the term of the extended tenancy. Upon conclusion of the extended tenancy, the WFH Unit must be made available to a Certified Household through a method determined by the Department.

2.5 Eligibility for Purchase – Restrictions on Ownership of MPDUs. To be eligible to buy or rent a WFH Unit, a person and members of that person's household who currently own a Moderately Priced Dwelling Unit (MPDU) in the County that is still under the MPDU occupancy and resale price controls, must sell the MPDU in accordance with that Program's requirements. The Director may waive this restriction for good cause. The sale must occur before, or simultaneously, with the settlement on the WFH Unit.

2.6 Eligibility for Purchase - Asset limit. To be eligible to purchase a WFH Unit, an Interested Household must not have combined assets that exceed 25% of the amount for which the household is prequalified by a lender.

(a) Assets are defined as amount of money in, or value of:

- (1) Paid downpayment;
- (2) Checking accounts;
- (3) Savings accounts;
- (4) Certificates of deposit and /or money market accounts;
- (5) Stocks and/or mutual funds;
- (6) Bonds;
- (7) Real property, less outstanding debt; and
- (8) Trust Funds.

(b) Assets not included in this definition include:

- (1) Amount in tax deferred retirement savings;
- (2) Amount in tax deferred college savings plans;
- (3) Cash value of whole life insurance;



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(4) Automobiles, (up to one per adult); and

(5) Cash value of Household furnishings and jewelry

## 2.7 Primary Residence Requirement for WFH Units.

(a) Except for the Commission, tenants and owners of WFH Units must occupy the WFH Unit as their Primary Residence and must execute and submit to the Department a signed Purchaser's or Renter's Agreement provided by the Department at the date of original sale or rental, which certifies that he/she must occupy the WFH Unit during the entire control period or until the unit is sold or is relinquished in accordance with the Workforce Housing Law and these regulations. The tenant or owner must submit an annual recertification stating, under the penalty of perjury, that the WFH Unit is their primary residence. If a WFH Unit owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the WFH Unit as their Primary Residence during the control period in order to fulfill the occupancy requirements of this Section.

(b) During the applicable control period, before the owner of a WFH Unit purchases other residential property in the Washington Primary Metropolitan Statistical Area (PMSA), as defined by the federal Office of Management and Budget (OMB), to be used as the owner's primary residence, the owner must first sell the WFH Unit as specified in these regulations. Before the renter of a WFH Unit purchases residential property in the Washington PMSA, the renter must surrender their WFH Unit and their Certificate of Eligibility to the Department.

(c) A WFH Unit owner who wishes permission to temporarily waive the WFH Unit occupancy requirement in order to rent his/her unit for cause must send a written request to the Director to obtain permission and a written waiver. The request must contain the reason(s) the owner desires to rent the unit and the period of time that the unit will be rented. The owner must demonstrate that he/she is required to move out of the Washington PMSA for employment or health reasons for a period not to exceed 24 months. The Director may extend this time limit for good cause. The WFH Unit owner must certify that he/she will reoccupy the WFH Unit within the term of the waiver, which will begin on the date the owner vacates the unit. If the owner fails to reoccupy the WFH Unit within 30 days of the expiration of the term of the waiver, the WFH Unit must be sold in accordance with the terms of this regulation.

(d) When granting a waiver to allow an owner to rent a WFH Unit, the Director must establish the allowable rent that the owner can charge during the temporary rental period. This rent must not exceed the total of principal and interest payments on a mortgage amount that is not in excess of the resale control price, real estate taxes, homeowner's insurance, reasonable management fees, homeowners association or condominium fees, and reasonable expenses attendant to the maintenance of the WFH Unit. If the owner retains responsibility for the payment of some or all of the utility expenses and maintenance costs, these expenses may be added to the rental rate. An increase in the rent may be permitted after one year, if the owner shows that there has been an increase in the listed costs used to determine the rent. The rent increase must be approved by the Department in writing.

(e) WFH Unit owners who temporarily rent their units must extend the WFH Unit covenants for a period of



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time equal to the rental period. The owner must execute a new covenant in the form provided by the Department before the final written approval from the Department may be granted. The Department must record the covenants among the land records of Montgomery County.

(f) WFH Unit owners who temporarily rent their units must sign a lease with the tenant. The owner must use the applicable model lease approved by the Department. The term of the lease must not exceed the term of the waiver granted by the Department.

(g) If a WFH Unit owner fails to occupy the WFH Unit as their primary residence and has not received written permission from the Director to rent or vacate the unit temporarily, the WFH Unit must be sold in accordance with Chapter 25B.

## Section 3 Requirements to Provide WFH Units

### 3.1 Requirements of the Agreement to Build WFH Units.

(a) Once the Planning Board has set the WFH Unit requirements for the Workforce Housing Project, a Developer must enter into a written Agreement to Build WFH Units with the Department in a form approved by the Department. This Agreement must be executed before any building permits may be issued by the Department of Permitting Services (DPS). This Agreement must contain at least the following information: \_\_\_\_\_

(1) The name of the project, the marketing name if different than the name submitted to the Planning Board, the apartment or condominium name, and the site plan, preliminary plan and project plan numbers, when applicable. A copy of the approved preliminary plan, site plan, project plan, or the record plat must be provided with the agreement.

(2) A plan for the staging of construction of all dwelling units that is consistent with Chapter 25B and any approved applicable land use, subdivision, or site plan.

(3) A copy of the applicable covenants, either rental or sales covenants.

(4) The Agreement must identify all land which is owned by or under contract of sale to the Developer, or, will be available, or is being processed for development and individually or collectively will be subject to Chapter 25B. For subsequent WFH Unit construction agreements, it will be necessary only to update this statement.

(5) A list showing the street addresses, unit numbers, and tax identification numbers, if known, for the WFH units, MPDUs and market rate units.



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(b) The Department must determine that the Agreement meets the requirements of Chapter 25B and these regulations. The Department will not enter into an agreement where the sizes of the individual WFH Units are less than 90% of the number of square feet of the individual market rate units containing the same number of bedrooms.

(c) Any revisions to the Agreement must be requested in writing from the Developer, and if approved by the Department, the approval must be in writing from the Director and affixed to the Agreement as an amendment in a form approved by the Department.

(d) A copy of the executed Agreement must be submitted to DPS with the first building permit application for the project. DPS must not issue building permits in a project having a WFH Unit requirement unless those units are included in the signed Agreement.

(e) The Department may enter into and execute agreements to build WFH Units with Developers who are not required to build WFH Units, but who want to enter into such an agreement voluntarily.

3.2 Housing Programs Which Satisfy the WFH Unit Requirement. Federal, state, or local housing programs may be used to fulfill WFH Unit requirements. When federal, state or local housing programs are used to comply with the requirements of Chapter 25B, the following conditions must be met:

(a) Sales prices or rental rates must be affordable to households within the WFH Unit income ranges.

(b) The Director must determine that the controls on the sales prices and/or rents will contribute to the long term availability of WFH Units and that the covenants on these units contain provisions for the County's recapture of excess profits realized by a WFH Unit owner as required in Chapter 25B.

## **Section 4 Alternative Compliance Measures for providing WFH Units.**

4.1 Requesting Alternative Compliance Measures. Under certain conditions as specified in Chapter 25B, it may be possible to request an alternative method of providing the required number of WFH Units. To satisfy the requirements of this Section, a Developer may request to:

(a) Build, or convert from non-residential use, the required number of WFH Units at an alternative site in the same Planning Policy Area, approved by the Director; and/or

(b) Buy, encumber, or transfer, and rehabilitate as necessary, existing WFH Units for which price or rent controls have expired;





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## 4.2 Approval to Provide WFH Units at an Alternative Location in the Same Planning Policy Area.

(a) If a Developer wishes to provide WFH Units at an alternative location, they must be provided in the same Planning Policy Area under the provisions of Section 25B-26, the Developer must submit a written request to the Director not less than 90 days prior to the submission of a Development Application for the Project for which the alternative location approval is being requested. The Director must communicate a decision on a request prior to the filing so that the Developer may include the Director's approval in the Development Application, if applicable.

(b) In order to make such a request to the Director, the Developer must submit in writing, at a minimum:

(1) Justification as to how the public benefit of locating WFH Units at the proposed alternative location, or converting non-residential property to WFH Units, is equivalent to the value of locating WFH Units in each applicable Project throughout the County; or

(2) Documentation in a form acceptable to the Department demonstrating that building a sufficient number of WFH Units at the original site would require a Change in Type of Building Construction;

(3) Justification that building or converting the WFH Units at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County; and

(4) Proof of control of alternative sites for building or conversion; such proof may include a title report showing ownership, an executed purchase contract for the site(s) which includes a description of the property, or other documentation acceptable to the Department.

(5) Any legal and descriptive information about the proposed alternative sites as the Department may require.

(c) The Director must submit any request for an Alternative Compliance Measure to the Alternative Review Committee.

(d) Transfer Decision and Agreement. The decision to approve a request for an Alternative Compliance Measure must take into consideration how the public interest will best be served. Any decision regarding the transfer must be made in accordance with the following conditions:

(1) The Alternative Review Committee must make a decision within 90 days of receiving the request. A copy of the decision must be provided to the Developer, the Planning Board, and the Montgomery County Department of Permitting Services.

(2) The Alternative Review Committee may reject any request, either in part or in whole, if the Alternative Review Committee determines that the transfer will not serve the public interest.



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(3) After the Alternative Review Committee has made a determination regarding the request, the Director must submit the determination prior to the time that the Planning Board or Director of the Department of Permitting Services considers its approval request for the original Development Application.

(3) If the Alternative Review Committee approves the request for an Alternative Compliance Measure for the WFH Unit, the Developer and the Department must enter into an Agreement to Build WFH Units which guarantees, at a minimum, that the WFH Units will be completed in the same time frame as the market rate units. This agreement must replace the Agreement to Provide WFH Units. Each agreement must include a schedule, binding on the Developer, for timely completion or acquisition of the required number of WFH Units.

(4) The Developer must prepare and execute the necessary warranty deed(s); arranging for settlement, ensuring that the deeds are properly recorded and delivering evidence of good title to the transferred lots or land.

(5) The Department may, at its discretion, require that the Developer post a bond in order to guarantee that the required WFH Units are built in accordance with the terms of the agreement.

## Section 5 Establishing Initial Sale and Rental Prices

### 5.1 Maximum Allowable Sales Prices of WFH Units.

(a) The Department will set WFH Unit sale prices at an amount that is affordable to the selected Certified Household based on the household's verified income and household size. A Certified Household is expected to pay no more than a certain thirty-three percent (33%) of its gross monthly household income towards housing expenses (including mortgage principal, mortgage interest, real estate taxes, hazard insurance, private mortgage insurance, and condominium fee, but excluding utilities). When the Developer provides utilities, the Department has the discretion to expect a household to pay up to thirty-six percent (36%) of its gross monthly income towards housing and utilities. Therefore, the Department will determine the sale price using the following pricing model and procedures:

(1) The Certified Household's total annual household income is rounded to the nearest \$500, and the monthly income is calculated by dividing the annual income by 12;

(2) The "monthly housing cost" is calculated by multiplying the resulting monthly income by thirty-three percent (.33), or thirty-six percent (.36) at the discretion of the Director as described in paragraph (a) above;



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(3) From the “monthly housing cost”, subtract monthly condominium fees, hazard insurance, private mortgage insurance, and real estate taxes to calculate the “adjusted housing cost”;

(4) The maximum allowable sales price is calculated as follows:

(A) Divide the “adjusted housing cost” by the applicable mortgage amortization factor for a 30 year, fixed rate conventional mortgage at the prevailing mortgage interest rate. The applicable mortgage interest rate will be determined by the prevailing interest rate for a 30 year, conventional mortgage as published by Freddie Mac (or such other source as determined by the Department). This figure represents the “maximum mortgage amount” the Certified Household can afford to support.

(B) Divide the “maximum mortgage amount” by 90% (.90) to calculate the “maximum allowable sales price” after accounting for a downpayment of 10%.

(b) At least annually, the Department must establish and publicize the factors it will use under this pricing model, such as: the expected percentage a Certified Household is expected to pay towards the downpayment, the prevailing mortgage interest rate, monthly real estate taxes, monthly private mortgage insurance premium, monthly hazard insurance, and other such factors). The prevailing mortgage interest rate may be adjusted as needed at the time the Offering Agreement is negotiated. The WFH Unit pricing standards and provisions of this regulation apply to all WFH Units offered for sale through the Department on or after the effective date of this regulation.

(c) The maximum allowable sales price includes the following closing costs which are to be paid by the Developer:

- (1) One-half of one percent for the permanent loan origination fee;
- (2) County tax certificate, transfer charges, revenue stamps and recordation charges;
- (3) Title examination, settlement, and attorney fees;
- (4) Notary fees and fees for preparation of a deed of conveyance, a deed of trust or mortgage, and the deed of trust or mortgage note;
- (5) Appraisal fee and credit report fee; and
- (6) House location survey plat.
- (7) Fees required to place permanent financing that are paid by the Developer.

(d) The “maximum affordable sales price” may be adjusted at the discretion of the Director to include closing costs.



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## 5.2 Amount Developer is to Receive from Sale Proceeds.

(a) The Department must ensure that the WFH Units are affordable to the full range of Certified Household in the program, based on their total household incomes. Therefore, at the time the WFH Units are offered for sale by the Developer, the Department will calculate the “base amount of proceeds” the Developer is to receive from the sale of the WFH Units. To do this, the Department will calculate a “maximum affordable sales price” for a household earning 100 percent of the area median income, as adjusted by household size according to the model and procedures described in Section 5.1(c) above. This “maximum affordable sales price” is then multiplied by the total number of WFH Units in the Project. The product of this calculation establishes the “base amount of proceeds” to the Developer.

(b) The “base amount of proceeds” that the Developer is to receive from the sales of the WFH Units will be determined when the Offering Agreement is executed between the Department and the Developer. Upon conclusion of the sales process for the WFH Units:

(1) If the actual sales proceeds realized by the Developer are in excess of the “base amount of proceeds” specified in the Offering Agreement, the Developer must return the excess proceeds to the Department;

(2) If the actual sales proceeds realized by the Developer are less than the “base amount of proceeds” specified in the Offering Agreement, the Department will provide the difference to the Developer out of the Housing Initiative Fund in a form to be determined by the Department. For example, the Department may provide no interest, second mortgages to the purchasers of WFH Units as needed to cover the shortfall.

(c) Water and sewer house connection fees are not included in the calculation of the “base amount of proceeds” the developer is to receive. In any instance where water and sewer connection charges are not waived, the “base amount of proceeds” may be adjusted to reflect this increased cost to the Developer.

(d) When the purchaser and Developer of a WFH Unit agree to modify the unit structurally to facilitate access or use by a Disabled Individual, the Department may adjust the “base amount of proceeds” the developer is to receive by the amount of the additional costs. The Developer must obtain approval of the price from the Department prior to executing a sales contract.

(e) The Director may adjust the “base amount of proceeds” the developer is to receive for units in age-restricted buildings if the Director determines that to do so will contribute to the long term availability and affordability of moderately priced units for Certified Households, and other households with moderate incomes. The Director may exercise this option upon the conclusion of the Priority Marketing Period if there are WFH Units that can not be sold to Certified Households at the approved WFH Unit sales prices.

(f) In the case the Developer is permitted to sell WFH Units to the general public, in accordance with Section



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6.2(g) below, the “maximum affordable sales price” to the non-income eligible purchaser shall be calculated at the 100 percent of median income level, unless otherwise determined by the Director.

## 5.3 Maximum Rental Rates for WFH Units.

(a) The maximum allowable rents that may be charged for the WFH Units are those in effect at the time the Department approves the rental Offering Agreement; WFH Unit rents must be based on the maximum income permitted under the program, as revised by June 15 of each year. One third of the rental WFH Units must be allocated to each of three income categories designated by the Department: a rent affordable to households earning 75% of median income, a rent affordable to households earning 95% of median income, and a rent affordable to households earning 115% of median income. If the number of units of a particular size is not divisible by three, then the remainders must be assigned to the 95% category.

(b) Rental rates established for WFH Units must distinguish units which are inclusive and exclusive of utilities paid by the tenant and those utilities paid by the Developer.

(c) WFH Units developed under the programs designated in accordance with Section 3.2 of this regulation are to be offered and marketed in accordance with the procedures established for those programs.

(d) The method for computing the maximum allowable monthly rents for WFH units is described below. The income for the rent calculation is based on one and one half (1½) people per bedroom. Rental rates must be computed based on the income limits for the Program in effect at the time the WFH Units are offered for rent. The resulting maximum allowable rent by this calculation must be adjusted by the Director, if necessary, to ensure that the maximum allowable rent for a WFH Unit is no more than 80 percent of the rental rate of market rate units of the same type listed below:

- (1) The maximum rent for an efficiency unit is based on the income for one person household.
- (2) The maximum rent for a one (1) bedroom unit is based on mid-point between the income for a one person household and a two person household (e.g. 1.5 people per bedroom).
- (3) The maximum rent for a two (2) bedroom unit is based on the income for a three person household.
- (4) The maximum rent for a three bedroom unit is based on the mid-point between the income for a four person household and a five person household (e.g. 4.5 people per bedroom).
- (5) Based on the appropriate household size and corresponding maximum income, the income for each unit size is multiplied by twenty-five percent (25%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit, excluding utilities.





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(6) When the Developer pays utilities, the appropriate household size and corresponding maximum income for each unit size is multiplied by thirty percent (30%) then divided by 12 and rounded to the next highest whole number which is evenly divided by five (5) to establish the rent for the unit. Alternatively, the Department may, at its discretion, use "Allowances for Tenant-Furnished Utilities and Other Services" for the Washington PMSA, as determined by the U.S. Department of Housing and Urban Development.

(e) The Director may set different maximum rent limits for rental units in age-restricted buildings if the Director determines that to do so will contribute to the long term availability and affordability of moderately priced units for Certified Households, and other households with moderate incomes. The Director may exercise this option upon the conclusion of the Priority Marketing Period if there are WFH Units that can not be rented to Certified Households at the approved WFH Unit rents.

(f) The maximum allowable rental rate for currently rented WFH Units must be adjusted annually by the Director in accordance with the County's voluntary rent guidelines. If the apartment development is financed through a federal or state affordable housing program, then the requirements of that program must supercede this regulation.

(g) Utility charges that are paid by the Developer may be added to the WFH Unit rental rate, at the discretion of the Director. The Department may use the annual utility allowances published by the U.S. Department of Housing and Urban Development (HUD) to calculate these charges. Any request by the Developer for a variance from these rates may only be granted by the Department upon receipt of a certified report from a registered engineer or by the appropriate utility company confirming that the HUD utility allowance is not a valid utility factor for the Project. After the first year of operation, utility charges may be based on the actual, average cost of the utility expenses for the previous 12 months.

(h) Laundry washer and dryer equipment must be provided in each WFH Unit unless this equipment is not provided in the market rate units. No increase in rent is allowed for laundry washer and dryer equipment unless the market rate units are separately charged and the increase is limited to the same fee that the market rate apartments are charged.

(i) The Developer must not be permitted to charge a fee for non-structured, automobile parking to WFH Unit tenants. Structured parking, garage or other enclosed spaces may be offered as an option to the WFH Unit occupants at the monthly rate normally charged to market rate units by the Developer.

(j) In the Department's annual report to the Council regarding the Program, the Director will report on the maximum sales prices and rent limits in effect for the year and the methodology used to arrive at the figures.

5.4 Rental WFH Units Sold as For Sale WFH Units. In the event a rental WFH Unit is sold as a sale WFH Unit, the WFH Unit must not be sold at any time during the applicable rental control period for a price greater than the controlled, approved resale price for the unit. The resale price must be established in accordance with this regulation as if the unit had been "for sale" WFH Unit priced as affordable at the 100 percent of median income level, based on



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household and bedroom size, and adjusted by the change in CPI since the date of the original rental agreement. A new control period for the unit must be established according to the control period in effect at that time for sale WFH Units. This control period must begin on the date of settlement of each unit. The existing rental covenants must be released, and new sale covenants recorded on the property.

## Section 6 Sale and Rental Procedures

### 6.1 Offering WFH Units for Sale or Rent.

(a) The Developer must offer WFH Units for sale or rent through the Department by completing and submitting an Offering Agreement in a form determined by the Department. The following information and documentation must be provided:

- (1) A description of the WFH Units including the number of units, unit types, and size by area and number of bedrooms, and other relevant details of the WFH Units;
- (2) The addresses, legal descriptions, and tax account numbers of the WFH Units;
- (3) A recorded subdivision plat, a copy of the approved preliminary plan, and two copies of the site development plan designating the location of the WFH Units;
- (4) The Declaration of Covenants, in recordable form;
- (5) A copy of the floor plans of each unit type,
- (6) The date(s) when WFH Units will be delivered for settlement or rental occupancy;
- (7) If the units are to be sold, a completed "maximum sale price" and "base amount of proceeds" calculation; if the units are to be rented, a schedule of approved maximum allowable rents by unit type and bedroom size; and
- (8) Any other information the Department deems necessary.

(b) WFH Units for sale must be available for settlement and occupancy in compliance with all County building and occupancy code requirements within 365 days of acceptance of the Offering Agreement by the Department

(c) WFH Units for rent must be available for rental occupancy in compliance with all County building and occupancy code requirements within 120 days of acceptance of the Offering Agreement by the Department.



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(d) The Developer may not require from a WFH Unit purchaser a deposit that exceeds one percent (1%) of the established WFH Unit sales price.

6.2 Lottery Selection Process for WFH Unit Purchasers. After the Department has approved the Offering Agreement, Interested Households must be selected through a lottery process conducted by the Department. This process must be used to establish a lottery list of Interested Households who will be permitted to complete the verification process in order to be given a Certificate of Eligibility to purchase a WFH Unit.

(a) The Department must notify Interested Households of the offering. A lottery entry form may be included with the notice sent to the Interested Households. This form will require self certification of information as required by the Department to assign priority points and conduct the lottery. The form must be completed and returned to the Department by the date indicated on the form in order to be entered into the lottery drawing. If the information provided by Interested Households is insufficient and/or inaccurate, those Interested Households will not be entered in the lottery. Based on the information provided, the Department awards points according to the factors listed below:

(1) One (1) point for primary employment of at least one household member as a public employee of the County, a municipality in the County, the County Public Schools, or of a local government sponsored enterprise serving Montgomery County, including, but not limited to the Housing Opportunities Commission, the Maryland-National Capital Park and Planning Commission, and the Washington Sanitary Sewer Commission, for a maximum of one (1) point. All employment categorizations will be determined by the Department;

(2) One (1) point for participation in an employer housing assistance program recognized by the Department, for a maximum of one (1) point;

(3) One (1) point for living in the County at the time of application to the lottery, for a maximum of (1) point;

(4) One (1) point for employment at an establishment located in the County, or for having a written job offer to work at an establishment in the County at the time of application to the lottery, for a maximum of one (1) point; and

(5) One (1) point for current owners or renters of Moderately Priced Dwelling Units (MPDUs) in the County.

(6) The maximum number of points that may be assigned to a lottery participant is five (5) points.

(b) One person households may only purchase one bedroom WFH Units; two person households may purchase WFH Units containing up to two bedrooms. Three or four person households may only purchase two or three bedroom WFH Units. Five person households may only purchase WFH Units with three or more bedrooms. An exception



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may be made for a Certified Household when WFH Units remain after all Certified Households of a larger household size above them on the lottery list have already selected their units. The Director may waive this limitation for good cause.

(c) The lottery drawing will commence by drawing first from among those lottery participants who have been assigned the highest number of points. A lottery list of names must be developed, with the order determined by the order in which the names were drawn.

(d) If there are WFH Units remaining in excess of the number of participants on the lottery list, the lottery drawing will continue and will be conducted among those assigned the next highest number of priority points. This process must continue until the Department determines that there are a sufficient number of participants for whom the available WFH Unit may be made available for sale.

(e) The Developer must offer to those Certified Households highest on the list drawn from the lottery the first opportunity to purchase the available WFH Units and must proceed in order according to the order indicated on the list.

(f) Certified Households selected by a lottery must have the exclusive right to enter into a contract for the purchase of a WFH Unit. The Priority Marketing Period begins the day the Department submits a list of Certified Households to the Developer and must end 90 days after the date of commencement.

(g) The Department may incrementally increase the maximum income for eligibility and extend the Priority Marketing Period in 30 day increments before opening the sales up to the general public.

(h) The Developer must not offer WFH Units to the general public unless the Priority Marketing Period has ended, the lottery list of all Certified Households has been exhausted, and a written notice has been obtained from the Department authorizing sale to the general public. The Priority Marketing Period is automatically extended unless the Department determines that no additional eligible persons are available to purchase the WFH Units. WFH Units that become available for sale after the Priority Marketing Period because the contract purchaser is not approved for permanent loan financing must be offered to Certified Households on the lottery list. WFH Units that are offered to the general public remain subject to all the regulations and laws governing the Program, except the income limitations.

(i) If a Developer offers WFH Units for sale within 6 months after the date of acceptance by the Department of a previous Offering Agreement for WFH Units in the same Project, then the lottery forms that were submitted for the previous offering may be used to generate a new lottery list through a new lottery drawing. The following provisions apply to the subsequent offering:

(1) The Developer's offering must contain the same type(s) of unit(s) with the same number of bedrooms per unit as were in the prior offering; and

(2) Interested Households must obtain a Certificate of Eligibility from the Department, they must not exceed the approved maximum WFH Unit income limits at the time the purchaser applies for mortgage financing.





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(3) The Priority Marketing Period for these subsequent offerings begins on the date the Department submits a list of Certified Households to the Developer.

## 6.3 Offering WFH Units for Rent.

(a) WFH Units offered for rent by the Developer may be leased without utilizing the lottery process unless otherwise required by the Director at the time the Department approves the Offering Agreement. The Developer must comply with all applicable local, state, and federal fair housing laws and must rent the available WFH Units only to Certified Households during the Priority Marketing Period. If a lottery process is used to rent the WFH Units, a similar point system as that described in this regulation may be used for ranking Certified Households. The Department must notify the Developer of the date on which the first lease for the property may be written. The Priority Marketing Period must begin on that date, and must end 90 days after the date of commencement unless the Department extends it for good cause.

(b) During the Priority Marketing Period the Developer must rent the WFH Units to Certified Households.

(c) If a lottery drawing is held to determine a marketing list of Certified Households, the Priority Marketing Period begins on the date of the lottery drawing.

(d) If the WFH Units are not rented to Certified Households during the Priority Marketing Period and the Developer has demonstrated to the Department's satisfaction that a good faith effort was made to rent the units to Certified Households, the Developer may then rent the units to the general public at the WFH Unit rental rate after submitting a written request to the Department and receiving written approval from the Department.

(e) The Priority Marketing Period is automatically extended unless the Department determines that no additional Certified Households are available to purchase the WFH Units. If construction or occupancy of the WFH Units is phased over a period of time, the Priority Marketing Period begins when each WFH Unit is offered for rent. Each phase of the development must have its own Priority Marketing Period.

(f) One person households may only rent one bedroom WFH Units; two person households may rent WFH Units containing up to two bedrooms. Three or four person households may only rent two or three bedroom WFH Units. Five person households may only rent WFH Units with three or more bedrooms.

(g) The WFH Units must be ready for occupancy within 120 days of the beginning of the Priority Marketing Period.

(h) The Developer must use the appropriate multi-family model lease approved by the Department subject to the additions listed below.





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(i) The lease agreements for WFH Units, other than those leased to the Commission, must include the provisions listed below:

(1) The tenant must occupy the unit as his or her Primary Residence and must not sublet the unit.

(2) The tenant must provide income and household composition information to the Developer every year for recertification purposes.

(j) Rental Income Recertifications.

(1) At the time of annual income recertification the tenant must provide federal income tax forms for the most recent year and a copy of the two most recent pay checks for all employed household members and the current household composition.

(2) The tenant must provide the recertification information within 30 days of receiving the recertification form from the Developer. If the tenant fails to provide the recertification information within the 30 day period the tenant must vacate the unit within 60 days of receiving notification from the Developer that the recertification form and required documentation was not received.

(3) The tenant must vacate the WFH Unit if, at the time of re-certification, the tenant's income exceeds by thirty percent (30%) the maximum eligible income necessary to qualify as an eligible person. After receiving information that a tenant's income exceeds the maximum permitted income limit, the Developer must take action necessary to have the tenant vacate the WFH Unit within 30 days of the Developer receiving the information, or by the end of the tenant's current lease term, whichever is later.

(k) Substitution of WFH Rental Units. The Developer may substitute another unit with the same number of bedrooms for the existing WFH Unit and permit the tenant to occupy their present unit at a rent higher than the approved WFH Unit rent. A new covenant form must be recorded subjecting the substituted unit to the WFH Unit covenants. If the development is subject to a regulatory agreement as part of a federal financing program, the provisions contained in that agreement supersede this regulation.

(l) Information to be Sent to the Department.

(1) The Developer must send a copy of the initial and all renewal leases to the Department within 30 days of signing the lease. In addition, the Developer must supply the information listed below in a format acceptable to the Department on an annual basis:

- Commission,
- (A) The number of WFH Units, by bedroom count, that are leased to eligible persons, or the
  - (B) For each WFH Unit, the tenant's name, household size, and total household income as of



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the date of the lease.

(C) A signed affidavit stating that to the best of the Developer's information and knowledge, the tenants who are leasing the WFH Units meet the eligibility criteria.

(D) A copy of each new or revised WFH Unit Renter Agreement obtained since the last annual report.

(2) If the Developer is required to report tenant occupancy information pursuant to a governmental financing regulatory agreement, then that report may be substituted for the information required in these regulations.

(m) Renting WFH Units to the General Public. If the Developer has a WFH Unit to be re-rented, the Developer must notify the Department and offer the unit to Certified Households for a period of sixty (60) days before renting the WFH Unit to the general public at the WFH Unit rental rate. The sixty (60) day period must commence when the Department receives written notice from the Developer of the unit's availability to be leased. The Developer must not rent WFH Units to the general public unless permission has been granted in writing by the Department.

## 6.4 WFH Unit Covenants.

(a) The Developer must sign and forward WFH Unit covenants in recordable form to the Department before selling or renting any WFH Units. The covenants must be in the form required by the Department and include the restrictions contained in Chapter 25B. The covenants must run with the land for the entire control period and until all requirements of Chapter 25B have been met. The covenants must be binding on the Developer, all assignees, mortgagees, buyers, and all other parties that receive title to the property.

(b) WFH Unit covenants must be recorded by the Department and must be recorded so that they are senior to all instruments securing permanent financing. Every deed transferring the WFH Unit must reference the WFH Unit covenants citing where they are recorded in the land records by liber and folio. If the covenants cannot be recorded on the WFH Unit in conformance with this regulation, then the unit must not be considered as having met the requirements of Chapter 25B.

(c) The Developer must provide a copy of the recorded WFH Unit covenants to the purchaser at settlement. The purchaser must acknowledge in writing that they have been given a copy of the covenants.

## 6.5 Sales and Rental Documentation.

(a) Not less than 30 days prior to settlement, the Developer must submit to the Department the following information in correct form:



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- (1) A copy of the initial sales contract or agreement;
- (2) An appraisal of the unit;
- (3) The purchaser's Certificate of Eligibility;
- (4) The WFH Unit Purchaser's Agreement;
- (5) Notice of liens in a format required by the Department and in accordance with state law; and
- (6) The purchaser's acknowledgement of receipt of covenants.

(b) In addition, within 45 days after the date of settlement, the Developer must submit to the Department the final settlement sheet and a copy of the two party deed. The deed transferring title must reference the recorded WFH Unit covenants by the date the covenants were recorded and their liber and folio.

(c) Within 14 days of the date of lease ratification for a WFH Unit rental unit, the Developer must submit to the Department the following information in correct forms:

- (1) A copy of the lease;
- (2) The renter's Certificate of Eligibility; and
- (3) The WFH Unit Renter's Agreement.

## **Section 7 Procedures for Purchase and Rental of WFH Units by the Commission**

### **7.1 Notifying the Commission.**

(a) The Department must notify the Commission within 5 days of approving the Offering Agreement of the availability of WFH Units and must provide the Commission with detailed information about the development and the WFH Units. The Commission has 14 calendar days from the date of the Department's notification to make a preliminary decision and to identify to the Developer and the Department any units it wants to reserve for possible purchase or lease. This time period may be extended at the Department's discretion if the Commission requires more time in which to make its decision. The Commission has the remainder of a 30 day period, which began on the date of the initial notice from the Department, to notify the Developer and the Department of its final decision on the purchase or lease of the units that were reserved.



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(b) During the 14 day period following an offer, all decisions on unit selections, readiness and communications with the Developer will be the responsibility of the Commission.

(c) After receipt of the final notice on the units that will be acquired by the Commission, the Developer must deliver sales contracts or lease agreements at least 90 days before the estimated delivery of the units. The Commission must execute the contracts for the WFH Units directly with the Developer. The contracts or lease agreements must be returned to the Developer within 30 days of receipt but no later than 60 days before the estimated date of delivery of the unit.

7.2 Purchase Restrictions. The Commission may not purchase or lease more than 33.3 percent of the units being offered. In addition, the Commission may not purchase or lease more than 33.3 percent of each type of unit which is being offered unless the Developer and the Department agree to other ratios. The term "type of unit" refers to substantial differences such as end and interior units, the number of bedrooms in a particular unit, and the presence of architectural compatibility materials, such as brick. The Commission may purchase resale WFH Units in a particular development only if it did not previously purchase its full allotment of units at the initial offering. In no case, may the Commission own more than 33.3 percent of the WFH Units in a particular development. When calculating the number of units the Commission may purchase, if the resulting number has a remainder, the number of WFH Units the Commission may purchase is rounded down to the nearest whole number.

## Section 8 Resale of WFH Units During the Control Period

### 8.1 Requesting a Resale Price Determination.

(a) For Purpose of Resale. An owner who wishes to sell a WFH Unit during the applicable control period must notify the Department in writing of their intent to sell, and request a resale price determination.

(b) For Purposes of Refinancing. During the applicable control period, the owner of a WFH Unit must not refinance their WFH Unit for more than the approved resale price, as determined by the Department. Owners wishing to refinance must request a resale price determination, in writing, from the Department, and provide a copy of an appraisal of the WFH Unit indicating the current fair market value. Such a refinancing must in no way relieve the owner of the responsibility to pay to the Housing Initiative Fund the required amount of the excess proceeds as calculated under these regulations.

(c) The refinancing must not result in reducing the owner's equity below \$10,000.

8.2 Establishing the Maximum Resale Price. The Department must calculate the maximum affordable resale price for the WFH Unit at the same affordability level as the original purchase according to the procedures that are used to



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set prices in new for sale WFH Units, which is described in Section 5.1(a) above.

8.3 Establishing the Amount Returned to the Seller at Resale. The amount that the seller receives is based on the following factors:

(a) The return to the seller must be the original price paid for the WFH Unit, plus an allowance equal to 15% of the difference between the appraised fair market value at the time of the original purchase and the appraised fair market value at resale.

(b) To this base, the Department must add the current Fair Market Value of Capital Improvements, as determined by the Department, made to a unit after the date of purchase. Capital Improvements must be permanent in nature and clearly add to the market value of the house or property. Normal owner maintenance, general repair work, and decorative items or work must not be included in the resale price determination.

(1) The owner must provide an itemized list of all Capital Improvements and upgrades for which credit is requested as part of the resale price. All Capital Improvements claimed must be documented with receipts, contracts or other evidence supporting their value. The Department may establish standard fair market values for certain Capital Improvements, and this value may be used by the Department rather than cost data records of the Capital Improvements submitted by the owner.

(2) Where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the Fair Market Value of Capital Improvements may be reduced to account for the depreciation of the improvements or equipment.

(c) Appliances will be depreciated on a 10 year straight-line basis from the initial purchase price.

(d) The owner must permit a representative of the Department to inspect the WFH Unit upon request to verify the existence and value of any Capital Improvements that are being claimed by the owner.

(e) The Department may approve a closing cost credit up to 3.5 percent of the maximum resale price to be added to the base price on behalf of the purchaser to pay for eligible closing costs. The seller must permit the purchaser to choose to purchase the WFH Unit at the base price, or at the base price plus the closing cost credit.

(f) No allowance is included in the resale price for the payment of real estate brokerage fees associated with the sale of the unit. A brokerage fee may be added to the resale price only if the unit is not sold during the Priority Marketing Period. The unit must have been actively marketed and included on the Department's resale information list and the resale telephone information line. Failure by the seller to accept a bona-fide offer may be justification for the Department's extending the Priority Marketing Period.

(g) If Veterans Administration (VA) financing is used to finance the purchase of a resale WFH Unit, the loan





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discount financing points must be added to the established maximum resale price. These points must not be included in any future resale price determination unless the purchaser utilizes VA financing or assumes the existing VA mortgage.

(h) Department Subsidy. The Department may provide a subsidy from the Housing Initiative Fund in a form determined by the Department to ensure that the seller receives the amount of money due to them and the resale price remains affordable to Certified Households. This subsidy must be calculated by subtracting the resale price from the amount due to the seller.

#### 8.4 Resale Procedures.

(a) The Department or its designee, or the Commission has the right-of-first-refusal to purchase any resale WFH Unit. The owner must offer the WFH Unit for resale only to the Department or the Commission, in that order, during the first 60 days following the owner's notification to the Department. The County may assign its right to purchase the unit to a third-party non-profit housing provider or to a Certified Household.

(b) The Department must notify the owner within 21 days of receiving a request for a resale price determination containing all the required information of the approved resale price.

(c) If the Department does not exercise its right to purchase, the Department will notify the Commission within 5 days and provide a description of the unit and the approved resale price. The Commission must notify the Department within 21 days if it wishes to purchase the WFH Unit. The Department must notify the owner within the 60 day period whether or not the Department or its designee, or the Commission, intends to purchase the unit, and of any other conditions of the sale. If the WFH Unit is not purchased by the Department, its designee, or the Commission, the Department must notify the owner of the method that must be used to sell the unit. If the Department or its designee, or the Commission decides to purchase the unit, the appropriate agency must execute the purchase contract with the owner within 60 days of receiving notification from the owner.

(d) If the resale WFH Unit is purchased by the Department or its designee, or the Commission, these agencies may retain the WFH Unit or make it available to Certified Households selected through a lottery or other means as may be approved by the Department.

(e) If the unit is not purchased by the Department, its designee or the Commission, the Department will establish methods to inform households of the availability of the WFH Unit and the method to be used to select purchasers. The unit must be offered exclusively to Interested Households for a period of 60 days.

(f) If a lottery is used, the lottery drawing will commence by drawing first from among those Interested Households present who have been assigned the highest number of points. The first Interested Household drawn must provide documentation of eligibility to the Department within 45 days of the date of the lottery drawing, including:

- (1) copies of the two most recent previously filed federal income tax returns,



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- (2) the applicant's two most recent W-2 forms,
- (3) copies of divorce or separation agreements (if applicable or if most recent tax return was filed as "married"),
- (4) copies of the two most recent employment pay check stubs from each current employer,
- (5) a pre-approval letter for mortgage financing from a lender in a form acceptable to the Department that indicates the maximum loan amount for which the interested household is eligible,
- (6) any other information as required by the Department.
- (g) Once eligibility has been verified by the Department the lottery winner will be given the exclusive right to enter into a contract for the purchase of the WFH Unit.
- (h) When the WFH Unit is sold to a Certified Household, the required documents listed in Section 6.5(a) of this regulation must be executed and sent to the Department within the established timeframes.
- (i) The WFH Unit may be offered to the general public only after the 60 day period that the WFH Unit was available to Interested Households has expired. The owner must not offer WFH Units to the general public unless this period has ended, the Eligibility List of all Interested Households has been exhausted, and written approval has been obtained from the Department authorizing sale to the general public. The 60 day period is automatically extended unless the Department determines that no additional Interested Households are available to purchase the WFH Unit.

## **Section 9      Resale of WFH Units After the Control Period**

9.1 Seller's Notification of the Department and the Commission. For the first sale of a WFH Unit after the expiration of the applicable control period, the owner must provide the following information to the Department 30 days prior to settlement:

- (a) A copy of the signed sales contract which clearly states the agreed upon sales price and which clearly indicates the Department's and the Commission's right of first refusal to purchase;
- (b) A copy of the real estate broker's listing agreement;
- (c) An itemized list of improvements including actual or estimated value of the improvements with



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documentation of the value in a form acceptable to the Department; and

- (d) The name and contact information for the settlement agent, once it has been determined.
- (e) An independent, third-party appraisal of the property no more than 60 days old.

9.2 The Department's and the Commission's Right to Purchase WFH Units with Expired Covenants. The Department must immediately notify the Commission of the offer, and the Commission must have the right to match the purchase offer. The Commission must notify the Department and the owner within 14 days of the Department's receipt of notification of the offer, whether or not it intends to purchase the unit. If the Commission decides to exercise its right to purchase the WFH Unit, it must tender a purchase contract to the owner within 21 days from the date it notifies the Department and owner of its decision. The offer must contain substantially the same terms and conditions as the contract offered by the third party, and a deposit must be made, payable to an escrow agent. If within 14 days of the Department's receipt of the offering notice, the owner does not receive written notice from the Commission that it intends to purchase the unit, or if after receiving such notice, the owner does not receive from the Commission a purchase contract at the price and terms substantially comparable to the offer within 21 days, the owner will be free to execute the prior contract at the price and terms originally offered.

9.3 Payment of Excess Proceeds to Housing Initiative Fund. For the first sale of a WFH Unit for which the applicable control period has expired, the seller must pay to the Housing Initiative Fund one half of the excess proceeds.

(a) Excess proceeds are defined as the amount by which a bona fide sales price exceeds the sum of the following:

- (1) The original sales price, or a subsequently approved resale price made during the control period, or the price that a rental unit would have been permitted to be sold for if it had been a sale unit at the time of the original rental;
- (2) An allowance for the increase in the cost of living as determined by consumer price index (CPI-U) for the Washington, D.C. PMSA from the date of the initial sale or the latest resale or rental;
- (3) The value of capital improvements made to a unit subsequent to the most recent date of purchase, as determined by the Department.
- (4) If a licensed real estate agent is used, the amount of the real estate sales commission at the average prevailing commission rates; however, the commission must not exceed 6 percent of the sales price.
- (5) An allowance for applicable transfer taxes and recordation charges.

(b) The Department must notify the owner of the calculation of the excess profit and the amount that must be



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paid to the Housing Initiative Fund within 21 days of receiving the required information from the owner.

(c) The required portion of the excess proceeds of the sale must be paid to the Housing Initiative Fund and must be collected at the time of settlement. The seller is responsible for ensuring that the payment is disbursed in accordance with this regulation. A copy of the final settlement sheet for the transfer of ownership must be sent to the Department within 14 days of the date of settlement on the property transfer. The Department must release the WFH Unit covenants and liens recorded in the land records after the County has received the required payment to the Housing Initiative Fund and the settlement documents.

(d) Failure of the owner to notify the Department of a sale, obtain a determination of excess proceeds, and pay the required portions of the excess proceeds to the Housing Initiative Fund constitutes a default under the covenants, these regulations, and Chapter 25B.

9.4 Divorce. If one owner buys out the other owner's interest in the unit as part of a divorce settlement, without selling the unit on the open market, then this does not constitute the first sale of the unit, and does not relieve the remaining owner of the shared profit obligation.

## Section 10 Sale of WFH Unit by Foreclosure

10.1 A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on a WFH Unit must notify the Department in writing not later than 45 days prior to the date of the foreclosure sale.

## Section 11 Enforcement

11.1 The Department and DPS are responsible for enforcing the provisions of Chapter 25B. Complying with Chapter 25B and an approved WFH Unit Agreement to Build is the responsibility of the Developer; revisions or amendments should be requested as soon as the Developer recognizes that meeting the terms of an approved WFH Unit Agreement to Build may not be feasible. The decision to approve a revision or amendment is within the Director's sole discretion. Any such decision must be communicated in writing to the Developer. The Director of DPS is authorized by law to deny, suspend, or revoke, any building or occupancy permit for a violation of Chapter 25B, the Agreement to Build WFH Units, or the WFH covenants; such action must be taken upon DPS' receipt of a written request from the Department or any other agency having oversight of the Project's development if the Developer is found to be in violation



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of Chapter 25B, the Agreement to Build WFH Units, or the covenants. After issuance of building permits for a subdivision has been halted or existing building or occupancy permits suspended or revoked, issuance of permits by DPS may not be resumed until both the Department and DPS are satisfied that the Developer is in compliance with terms of Chapter 25B, the Agreement to Build WFH Units, and the covenants. An occupancy permit must not be issued for any unit in a subdivision when the subdivision does not comply with Chapter 25B or this Executive Regulation.

Approved as to Form and Legality  
Office of the County Attorney

By: \_\_\_\_\_

*Unkei L. Paul*

Date: \_\_\_\_\_

*8/22/06*

\_\_\_\_\_  
Douglas M. Duncan  
County Executive

Date: \_\_\_\_\_

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